

STATES OF JERSEY



Jersey

DRAFT CONSTITUTION OF THE STATES AND PUBLIC ELECTIONS (JERSEY) LAW 202- (P.17/2021): AMENDMENT

**Lodged au Greffe on 1st April 2021
by the Senator I. J. Gorst
Earliest date for debate: 20th April 2021**

STATES GREFFE

DRAFT CONSTITUTION OF THE STATES AND PUBLIC ELECTIONS
(JERSEY) LAW 202- (P.17/2021): AMENDMENT

1 PAGE 16, ARTICLE 3 –

In the inserted Article 5, in the words before paragraph (a), for “The term of office of a Deputy” substitute –

“The term of office of a Deputy for a constituency”.

2 PAGE 16, ARTICLE 3 –

For the inserted Article 5(b)(i) substitute –

“(i) the first day on which a Deputy elected for that constituency at the next ordinary election takes the oath of that office, or”.

3 PAGE 16, ARTICLE 3 –

After inserted Article 5 insert –

“5A Transitional provision for the 2022 ordinary election

- (1) This Article applies in relation to a person who, immediately before the 2022 ordinary election, holds office as a Deputy for a constituency (a “pre-2022 constituency”).
- (2) Where the Deputy’s pre-2022 constituency comprises an area within St. Helier, Article 5 has effect in relation to the Deputy as if for subparagraph (b)(i) there were substituted –
 - “(i) the first day on which a Deputy elected for any of the constituencies of St. Helier South, St. Helier Central or St. Helier North at the next ordinary election takes the oath of that office, or”.
- (3) In any other case, Article 5 has effect in relation to the Deputy as if the reference in Article 5(b)(i) to “that constituency” were a reference to the constituency that includes, or corresponds to, the Deputy’s pre-2022 constituency.
- (4) In paragraph (1), the reference to the 2022 ordinary election is a reference to the election held in accordance with Article 6(1).”.

4 PAGE 16, ARTICLE 4 –

In the inserted Article 6(1), for “22nd June 2022” substitute “18th May 2022”.

5 PAGE 16, ARTICLE 6 –

In the inserted Article 2(1), for “22nd June 2022” substitute “18th May 2022”.

6 PAGE 17, ARTICLE 7–

Delete Article 7, and renumber the subsequent Articles accordingly.

7 PAGE 17, ARTICLE 7–

At the beginning of Part 4 there is inserted –

“8 Transitional provision for the 2022 ordinary election

After Article 21 of the States of Jersey Law 2005, there is inserted –

“21B Transitional provision for the 2022 ordinary election

(1) For the purposes of Article 21(3)(b), a 2022 departing Senator is not to be treated as ceasing to be an elected member until the first day on which a Deputy elected for any constituency at the 2022 ordinary election takes the oath of that office (and the reference in Article 21(1)(b) to an “elected member” is to be construed accordingly).

(2) In this Article –

(a) “2022 departing Senator” means a person who, immediately before the 2022 ordinary election –

(i) holds office as a Senator; and

(ii) holds a Ministerial office (but is not the Chief Minister); and

(b) references to the 2022 ordinary election are references to the election held in accordance with Article 6(1).”.

and renumber the subsequent Articles accordingly.

8 PAGE 17, ARTICLE 9(2) –

In Article 9(2) for “22nd June 2022” substitute “18th May 2022”.

9 PAGE 17, ARTICLE 9(3) –

In Article 9(3), for “22nd December 2021” substitute “18th November 2021”.

SENATOR I.J. GORST

REPORT

Introduction

This amendment is designed to rectify what I consider to be some limitations and oversights in [P.17/2021](#) as lodged by the Privileges and Procedures Committee. The first relates to the date of the 2022 election – a simple point of polite disagreement that I have with PPC, and the second relates to the term of office for States Members and Ministers – where I believe PPC’s proposals have created unintended consequences.

These are, in my view, two separate issues and I will be asking that the Assembly considers and votes upon them separately.

Election Day

I do not believe that any Parliament should extend its own period of office beyond that which the public believed it was voting for at the election which put that Parliament into office, except for in periods of crisis. Moving the election day to 22nd June 2022 gives this Assembly and the Council of Ministers an extra month in office, and I cannot see a legitimate reason that is in the public interest for doing so.

I can, to some extent, understand the points made by PPC regarding a mid-May election – with the impacts of Easter, the May Bank Holiday and Liberation Day. If there are problems to overcome, however, then in my view these should be highlighted now as something to be addressed in time for the 2026 election, so that the electorate in 2022 can be aware of the mandate they are giving to the new Assembly. This will be possible through new Article 6(2) and (3) as set out in P.17/2021. I consider it to be a dangerous precedent, and in my opinion not good for democracy, for a Parliament to decide, one year before an election, to extend its own term of office for one month for what appear to be minor administrative reasons.

In any event, I do not support an election on 22nd June 2022. I am aware that some Members found the arrangements for Liberation Day in 2018 difficult, given that an election was being held a week later. However, arrangements were at least put in place in 2018 to ensure that no Member seeking re-election was given prominence on Liberation Day. Under these proposals from PPC, Liberation Day would instead risk becoming the campaign launch day for all Members seeking re-election in June. I do not believe that this is an improvement on the current arrangements or that it is a satisfactory state of affairs.

Accordingly, I propose through this amendment that, for the election in 2022, we maintain the status quo, and a date of 18th May 2022. It should also be noted that there is no reason why the provisions of [P.88/2018](#) cannot be accommodated with a May 18th election, given that Deputy Maçon’s proposition was adopted before the commencement of this Assembly and that the existing election date of 18th May 2022 has been set for some years.

Future elections

The dates of future elections, and whether they take place in Spring or Autumn for example, are rightfully a matter for this and future Assemblies on the advice of PPC (as is provided for in the draft Law).

Whilst it doesn’t impact on this Amendment, I believe that PPC should propose the dates of future elections as early as possible – and as mentioned above I think it would be appropriate for this Assembly to set the date of the 2026 election, so the electorate can be clear as to the mandate they are giving the Assembly at the next election. Indeed,

I see no reason why this Assembly shouldn't set the date for the election in 2030 as well. The option remains for the Assembly elected in 2022 to change the date of the 2030 election should it have a compelling reason for doing so.

Term of office – States Members

At present, Senators and Deputies (under the [States of Jersey Law 2005](#)) and Connétables (under the [Connétables \(Jersey\) Law 2008](#)) remain in office until new Members elected or re-elected to those offices at an election take their oath of office. This ensures that we have a degree of continuity and that Jersey always has a Parliament in place.

Under the proposals in P.17/2021, this arrangement would end. A Deputy would cease to hold office on the day of an election. With Senators abolished, this would mean that only Connétables would remain in office. Jersey would therefore effectively not have a Parliament for the period between election day and the swearing in of elected or re-elected Members – currently approximately two weeks.

This would cause a problem in emergency situations, where it might be necessary for the States to meet in the Island/national interest. Perhaps more importantly, it would mean that Islanders are left without official representation for the period between an election and Members taking their oaths of office.

This amendment rectifies this position by returning to the current position, by which an Assembly remains in place until Members who are elected or re-elected at an election take their oath of office.

Term of office – Ministers

The position proposed in P.17/2021 is perhaps more serious in respect of Ministers. If adopted unamended, it would mean that all executive power would be invested in the Chief Minister from the day of an election until the appointment of a Council of Ministers is complete under Article 19(7) of the States of Jersey Law. At present, this can take approximately 3 weeks in total.

I do not believe this is an improvement on the current position. At present, the Chief Minister remains in office until a further appointment is made under Article 19(7), and this would remain the case under P.17/2021. At present also, a Minister who is not re-elected (either because they retire from the States or lose their seat) retains their ministerial post until a new Assembly is constituted upon the new Members taking their oath of office. Ministers who retain their seats at the election then remain in place until a new Council is appointed.

This is admittedly not an ideal arrangement; in that it provides only stuttered continuity in those who hold executive authority. It is, however, better than simply investing all executive power in the Chief Minister alone for around three weeks. This is not to impugn the integrity or intentions of the current or any future Chief Minister. I believe it is more a matter of practicality. Even though a Chief Minister in this scenario (and all Ministers at present in the transition period from one administration to another) would only undertake functions and actions that are critical to the operation of Government, this can still amount to a significant amount of work, and a particular burden if it falls on one person. As well as being impractical, it also isn't fair.

This amendment therefore again maintains the current position for the term of office for Ministers.

Conclusion

I suspect that this amendment may cause contention in respect of the election date. I respect that Members will have strong and differing views on this matter. For my part, I felt it important to set out my opinion and give Members an option to retain the position that has been planned and intended for a number of years. I believe a May 2022 election is the right, proper and correct course of action.

I hope there is greater consensus in respect of the second aspect of this amendment, which I hope and believe was simply an oversight of the PPC. I am of the view that this amendment, by returning to the existing arrangements for the terms of office for Members and Ministers, maintains a more preferable position with regard to continuity, resilience, and representation than would be the case if the Draft Law proceeded unamended.

I am grateful for the consideration given by Members to these matters and hope to receive their support.

Financial and manpower implications

There would be no resource implications in the event that this amendment were adopted.